

REMARKS

Claims 1, 2, 4-21, and 23-44 are now pending in the application, of which Claims 13-15 and 39 have been withdrawn from consideration. Claims 1, 2, 4-12, 16-21, 23-38, and 40-44 stand rejected. Claim 11 has been cancelled, and Claims 1, 2, 4-8, 10, 12, 16-21, and 23-36 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

MINOR, NON-NARROWING CLAIM AMENDMENTS

Minor, non-narrowing amendments have been made to Claims 1, 2, 4-8, 10, 12, 17-21, and 23-36 to overcome the Examiner's objections. Accordingly, withdrawal of the objection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 112

Claims 11, 12, 16-21, 23-31, 37, 38, and 40-44 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 11, 12, 16, 20, 21, 25, 26 & 36 have been amended or cancelled, thus obviating the rejection. With respect to the "Aperture" limitation, the examiner's attention is respectfully directed to Figure 13. In this regard, applicant submits that by way of non-limiting example, the aperture can be defined between surfaces 26 and 94.

REJECTION UNDER 35 U.S.C. § 101

Claims 11 and 12 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter, specifically regarding the appearance of positively reciting the human body. Applicants have cancelled Claim 11, thus obviating the Examiner's objection.

REJECTIONS UNDER 35 U.S.C. § 102 & 35 U.S.C. § 103

Claims 1, 2, 4-8, 16-19, 32-38, and 40-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kohrs (U.S. Pat. No. 6,224,631). This rejection is respectfully traversed.

The Office rejects Applicants' claims using Kohrs under two different theories. Both theories fail in as much as both theories interpret Kohrs in a manner which limitations are not shown.

The Examiner's attention is directed to Claim 1 which includes the limitation that the fastener and implant are configured to fixably engage graft material. In this regard, Claim 1 has been amended to include the limitation that the fastener and the implant define an aperture therebetween, said aperture being configured to fixably engage a graft. Applicants respectfully assert that Kohrs does not teach this limitation. Further, Claim 1 contains the limitation "one of the implant or fastener defines a graft engaging surface having graft engaging members." Applicants respectfully assert that the Kohrs reference does not teach this limitation under either of the proposed interpretations.

Claim 16 contains the limitation that the contoured surface is a threaded surface which defines an arcuate groove. Further, Claim 16 has been amended to clarify that

the staple interrupts the arcuate groove so as to prevent rotation of the implant with respect to a work surface. Applicants note that the bone support matrix (40) of Kohrs has a bone support matrix (40) with helical threads (43) which are complimentary to portions of the helical threads 7a of the implant (10). While a non-threaded support matrix is contemplated, Kohrs is silent as to a component relationship with prevents rotation of the implant (see Kohrs: column 7, lines 8-24).

Applicants further note that Claim 16, as described above, contains the limitation that the implant and the staple define a soft tissue accepting aperture therebetween. Applicants assert that Kohrs simply does not define a soft tissue accepting aperture between the implant and the staple. As such, Kohrs does not teach every limitation Claim 16 or its dependents.

Claim 36 has been amended to include the limitation that the fastener is disposed within a channel so as to interrupt the arcuate groove defined by a thread on an exterior surface of the implant. This disposition prevents rotation of the implant with respect to the aperture. As described above, Applicants assert that Kohrs is silent to this limitation.

Claims 9-12, 20, 21, 23-29, and 32-35 are rejected as being anticipated by Greenfield (U.S. Pat. No. 5,584,835). The Examiner's attention is directed to independent Claim 9 which has been amended to clarify that the exterior surface has a pair of channels that intersect an exterior threaded surface of the implant. The staple is at least partially disposed within the longitudinal channel of the exterior surface. Applicants respectfully assert neither Greenfield nor Kohrs teach this limitation.

Claim 20 has been amended to include the limitation that the staple intersects the groove so as to prevent rotation of the implant with respect to a work surface. Applicants note that the fastener structure of Greenfield is an interior fastener, it is not capable or configured to prevent the rotation of the implant. Further, Greenfield does not teach “whereby the staple bindingly engage both the implant and a surface defining the bone aperture.” As such, Applicants respectfully assert that Greenfield does not teach each of the limitations of Claim 20 or its dependents.

Similarly, Claim 32 contains the limitation that the exterior surface of the implant defines an arcuate groove and the staple bindingly intersects the groove so as to resist rotation of the implant. The Greenfield reference does not teach this limitation, as Greenfield teaches an interior member which does not interact with the exterior surface. Applicants respectfully assert that the rejection of Claim 32 and its dependents has been overcome.

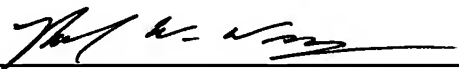
Claims 20, 21 and 23-29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Jackson (U.S. Pat. No. 6,835,206). Claims 30 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jackson. Claim 20 has been amended to include the limitation that the fastener is driven into a pair of channels defined by an exterior surface of the implant. Applicants note Jackson does not teach disposing a staple in a pair of longitudinal channels to prevent rotation. As such, the references do not teach each limitation and the rejection is improper.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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